

NEW IN THIS EDITION

CUSTOMARY TRADE



QUESTIONS AND ANSWERS

The Federal Subsistence Board at their January 14, 2003 meeting adopted new regulations clarifying the limits of the “customary trade” of subsistence-caught fish, their parts, and their eggs. The Board’s final rule sets enforceable regulations that protect the traditional practices of “customary trade” involving subsistence-harvested fish, but reduces the potential for commercializing those fish by prohibiting customary trade with any business and re-sale by nonrural individuals. The new regulations allow “customary trade” transactions between rural residents to continue, but limits transactions between rural residents and others to fish sold for personal or family consumption only.

What is “Customary Trade”?

“Customary trade” is the name given to the traditional cash sales of subsistence-harvested fish and wildlife.

Are sharing and barter affected by these regulations?

No, sharing and barter are not affected by these regulations. Under Title VIII of ANILCA, sharing, barter, and customary trade are protected. These regulations focus only on “customary trade”. “Sharing” refers to distribution of subsistence foods without receiving something in return; while “barter” is the limited exchange of subsistence-harvested fish and wildlife for goods other than cash.

Do the new regulations defining “Customary Trade” of fish apply to other subsistence-harvested resources, such as game animals?

No. The regulations passed by the Federal Subsistence Board are only for the cash sales of subsistence-harvested fish.

Who can sell subsistence-caught fish?

Only rural residents (Federally qualified) are allowed under Federal regulations to exchange subsistence-caught fish for cash.

The new regulations:

1. Provide for continuing “customary trade” between rural residents. Most “customary trade” exchanges take place in rural communities and involve small amounts of fish. The new regulation is simpler and eliminates the troublesome wording, “significant commercial enterprise”;
2. Prohibit sale to and purchase by businesses of subsistence-caught fish, as well as sale of subsistence-caught fish by nonrural individuals;
3. Require that nonrural purchasers of subsistence-caught fish use the fish for their own or their family’s personal consumption. Nonrural purchasers cannot collect and re-sell subsistence-caught fish; and,
4. Are faithful to the views expressed by many of the Regional Advisory Councils that the use of fish obtained through customary trade be consistent with the intent of Title VIII of ANILCA.

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As a rural resident to whom can I legally sell my subsistence-harvested fish?

You may sell your subsistence-caught fish to another rural resident or to others who are not rural residents.

You may not sell your subsistence-harvested fish to any individual, business, or organization required to be licensed as a fisheries business or any other businesses required to be licensed under Alaska Statute.

A rural resident who holds either a commercial fishing license and/or a commercial fishing limited entry permit may engage in “customary trade” only when conducted separate from his or her commercial fishing activities.

Can an individual who is not a rural resident sell subsistence-harvested fish?

No. Only rural residents are allowed under Federal regulations to sell subsistence-caught fish. Nonrural individuals who purchase subsistence-harvested fish must use the fish for personal or family consumption and cannot resell it.

If I want to sell subsistence-harvested fish that have been processed, are there other regulations governing the sale of these fish?

Yes. The Federal “customary trade” regulations do not preempt State or Federal laws regarding the processing and sale of food for human consumption. All foods sold for human consumption must comply with State and Federal food safety laws.

What is the definition of processing?

Processing, under State law, includes all activities, which would change the physical condition of the fish. This includes butchering, thermal processing, cooking, dehydrating, freezing, pickling, salting, shucking, or smoking. Some examples of processed fish include dried fish, salted fish, salmon strips, and canning.

How does the State of Alaska regulate “customary trade?”

“Customary trade” is prohibited by the State unless specifically allowed by the Alaska Board of Fisheries. Currently, only “customary trade” of herring roe on kelp in Southeast Alaska is allowed under State regulations.

As a rural resident may I sell subsistence-caught fish, when the fish are harvested from State waters?

No. Regulations adopted by the Federal Subsistence Board only pertain to Federal public lands and waters. This means you can only sell subsistence-harvested fish that have been taken from waters under Federal jurisdiction.

Is it legal for the sale of subsistence-caught fish to occur outside of Federal jurisdiction?

It is the opinion of the Federal Subsistence Board that Federal regulations governing “customary trade” of subsistence-harvested fish extend to any “customary trade” of legally taken subsistence fish regardless of where the actual cash transaction takes place. However, be aware that State officials may disagree with this interpretation and could decide to prosecute persons selling subsistence harvested-fish on state or private lands.

Can these regulations defining “customary trade” be changed?

Yes. If the public, Regional Advisory Councils or Federal and State agencies identify a need to modify or provide for region-specific regulations following the implementation of the new “customary trade” regulations, the regulations can be revised through the annual regulatory review cycle.

For more information on customary trade,
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